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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
THE INVESTIGATION OF

JAMES G. VOGEL, M.D.,

Licensee

MEMORANDUM AND ORDER ON SETTLEMENT CONFERENCE

TO: James G. Vogel, M.D.
Riverside Clinic
580 North Washington Street
Janesville, WI 53545

Arthur Thexton
Attorney at Law
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

An informal settlement conference was conducted in the above-captioned matter before an informal settlement conference committee of the Medical Examining Board on May 21, 1991. The purpose of the conference was to provide interested parties with an opportunity to discuss allegations received pertaining to the practice of Dr. Vogel as a physician, and to attempt to reach a fair and consensual resolution of the matter.

The committee consisted of Dr. H. Mowat Waldren and Ms. Ann Neviaser. Dr. Vogel appeared in person and without legal counsel. Others present included Wayne Austin, the board's legal counsel, and Arthur Thexton, attorney for the Department of Regulation & Licensing, Division of Enforcement.

The parties orally presented their respective positions regarding the matter to the committee, and the committee deliberated on a possible disposition of the matter. The committee thereafter presented a proposed Stipulation for Dr. Vogel's consideration, a copy of which is attached hereto and made a part hereof. The Stipulation was ultimately executed by Dr. Vogel, Mr. Thexton, and Dr. Michael P. Mehr, board Secretary.

Based upon the proceedings at the conference, and upon the Stipulation of the parties, the board enters the following order.

ORDER

NOW, THEREFORE, IT IS ORDERED that based on the findings and conclusions in this case, as set forth in the Stipulation of the parties hereto, Dr. Vogel be, and hereby is, reprimanded.

Dated this 24 day of ^{July}~~June~~, 1991.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by Michael P. Mehr, M.D.
Michael P. Mehr, M.D.
Secretary

WRA:BDLS2:497

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
THE INVESTIGATION OF

JAMES G. VOGEL, M.D.,

Licensee

STIPULATION

James G. Vogel, M.D. (Dr. Vogel), and the Medical Examining Board (board), having reached agreement on disposition of the informal complaint identified as 89 MED 407, agree and stipulate as follows:

1. This Stipulation shall be made a part of a Memorandum and Order on Settlement Conference to be issued by the board, and all terms of the Stipulation shall be binding on Dr. Vogel as a part of the board's order.
2. This Stipulation and the board's order shall be placed in Dr. Vogel's permanent file, and may be used if there are further complaints against him.
3. Dr. Vogel is licensed to practice medicine and surgery in Wisconsin by license #21538, issued on April 21, 1978, and he practices at Riverside Clinic, 580 North Washington Street, Janesville, WI 53545.
4. At the time of the incident herein, Patient W was 25 years of age. She had a history of pelvic inflammatory disease, including a pelvic infection at age 17 which was apparently successfully treated with antibiotic, puncture drainage of cysts on the right ovary in 1980, and irregular vaginal bleeding and associated abdominal pain in 1981. Patient W first saw Dr. Vogel on November 4, 1981, for the latter problem.
5. Dr. Vogel did a pap test and pelvic examination. Dr. Vogel indicated to the patient that it appeared she had a cyst on her right ovary, and he prescribed birth control pills for the bleeding.
6. Dr. Vogel next saw the patient on November 30, 1981, at which time she reported worsening pain and no improvement in the vaginal bleeding. Dr. Vogel

determined that it would be necessary to perform a right salping-oophorectomy. Neither a laparoscopy nor ultrasound was performed.

7. Dr. Vogel prepared a consent surgery consent form which was executed by Patient W. The form specified that the patient was aware of risks "such as anesthesia, infection, bleeding [and] damage to bowel or bladder." Dr. Vogel excised the following: "I am aware that sterility may result from this procedure." Based on the patient's age, her history and his examination, Dr. Vogel felt that the chances of advanced disease were small and he was therefore comfortable in deleting reference to the possibility of sterility.

8. Surgery was performed on December 1. Upon opening the patient, Dr. Vogel discovered that she suffered from advanced endometriosis. Because the patient was already sterile, because in Dr. Vogel's opinion a complete hysterectomy was indicated, and because Dr. Vogel wished to avoid the necessity of a second operation, he performed the hysterectomy without the patient's consent.

9. The parties agree that Dr. Vogel's failure to secure Patient W's consent prior to performing a hysterectomy is conduct which constituted a danger to the welfare of the patient, and which constituted an inappropriate failure to inform the patient of all alternate viable medical modes of treatment.

10. The parties agree that appropriate discipline to be imposed in light of the findings herein is a reprimand.

Dated this 15th day of June, 1991.

James G. Vogel, M.D.
James G. Vogel, M.D.

Dated this 19 day of June, 1991.

Arthur Thexton
Arthur Thexton, Attorney, Division of Enforcement

Dated this 24 day of June, 1991.

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

by Michael P. Mehr, M.D.
Michael P. Mehr, M.D., Secretary

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is July 29, 1991.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

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